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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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EXAMINER

STEPHENS, JACQUELINE F

ART UNIT PAPER NUMBER

3761

DATE MAILED: 09/28/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/987,196

Applicant(s)

ERDMAN, CAROL L.

Examiner

Jacqueline F Stephens

Art Unit

3761

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 14 July 2004 and 14 September 2004.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-53 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-53 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____

DETAILED ACTION

Response to Arguments

1. Regarding the rejection of claims 1-12, 14-17, 19-22, 24-27, 29-44, 46-49, and 51 as being anticipated by Roe USPN 5998695, applicant's arguments are not persuasive. Applicant again argues Roe does not disclose a topsheet that has a hydrophilic treatment on only a portion of a surface of the topsheet. Amended independent claim 1 recites, "at least one treated hydrophilic zone corresponds to only a portion of a surface of said topsheet defined by an area that corresponds to a predetermined insult point". The examiner repeats the argument that given the broadest reasonable interpretation, any part or portion of the hydrophilic treated topsheet can constitute a portion of the surface of the topsheet, and can be construed as a hydrophilic zone. For example a portion in the center of the topsheet can be a hydrophilic zone and would also correspond to a predetermined insult point, which has not been defined by the applicant in the claim. Furthermore, because the claim states "at least one treated hydrophilic zone", this allows for various portions to be treated and construed as hydrophilic zones. Applicant additionally argues the hydrophilic zone does not correspond to just any portion of a surface of the topsheet that is treated to be hydrophilic and the inventor has measured and disclosed the precise size and location of insult points for both male and female babies. However the size and location parameters have not been used to define a predetermined insult point in the claims. Although the claims are interpreted in light of the specification, limitations from the

Art Unit: 3761

specification are not read into the claims. See *In re Van Geuns*, 988 F.2d 1181, 26 USPQ2d 1057 (Fed. Cir. 1993).

2. Applicant repeats the arguments found on page 18, paragraph 2 filed 10/21/03 that Roe does not disclose a topsheet that has at least one treated hydrophilic zone that comprises a skin-wellness substance, as the hydrophobic lotion composition is an alternative the hydrophilic treatment. As stated in the Office Action mailed 1/21/04, the examiner interprets Roe to disclose at col. 6, lines 1-51 a topsheet that may be made of hydrophobic materials, and if made of hydrophobic materials, at least the upper surface is treated to be hydrophilic to allow liquids to transfer through the topsheet more rapidly. The omission of the hydrophilic treatment is applicable to an apertured topsheet, which has apertures large enough to allow the penetration of aqueous fluids like urine without significant resistance. In the absence of an apertured topsheet, a hydrophilic treatment is desired for the reasons stated above. Otherwise, a hydrophobic non-apertured topsheet may impede the flow of fluids through the topsheet. Roe discloses the lotion composition as appropriate for being used alone or with a hydrophobizing treatment. In the event that the lotion composition is used alone, one would still have a topsheet with a hydrophilic treatment and a lotion composition. The fact that the lotion composition is hydrophobic further validates the use of a hydrophilic treatment, particularly on a non-apertured topsheet.

Art Unit: 3761

3. As to the rejection of claims 13, 18, 23, 28, 45, and 50 as being unpatentable over Roe USPN 5998695 in view of Guidotti, applicant's arguments are not persuasive. Applicant argues one of ordinary skill in the art would not expect a successful result because reducing the hydrophilic zone limits the regions where bodily fluids will be more rapidly absorbed into the absorbent core of the article. Applicant further argues the inventor has discovered that by providing that the hydrophilic treatment is for "only a portion" of a surface on a topsheet that corresponds to the insult point(s) on the absorbent article produces the unexpected benefits of improving leakage protection of the absorbent article, while also improving the cost-efficiency of the absorbent article. It is noted that the affiant has indicated the present invention produces "unexpected results" over the prior art. However, the affidavit does not give specific comparative results between the present invention and the prior art. With respect to applicants' mention of unexpected results, applicant is invited to provide proof of such results in an affidavit under 37 CFR 1.132.

4. Applicant's arguments with respect to claims 50-53 have been considered but are moot in view of the new ground(s) of rejection.

Claim Rejections - 35 USC § 102

5. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

6. Claims 1-12, 14-17, 19-22, 24-27, 29-44, 46-49, and 51 are rejected under 35 U.S.C. 102(b) as being anticipated by Roe USPN 5998695.

As to claims 1-3, 9-12, 14-17, 19, 21, 22, 24-27, 29, 31-35, 41-44, 46-49, Roe discloses an absorbent article comprising **20**: a front and rear waist portion cooperating to form a waist opening (Figure 2); a crotch region formed between the front waist and rear waist portions (Figure 2); a selectively-permeable topsheet **24**. The topsheet is selectively permeable as Roe discloses the topsheet may comprise hydrophobic fibers (col. 6, lines 1-14) and treated to be hydrophilic on an upper (outer) surface. Therefore, the lower (inner surface) is hydrophobic (col. 6, lines 1-14). The article further includes a substantially impermeable backsheet **26**, and an absorbent core **28** disposed between the selectively permeable topsheet and substantially impermeable backsheet. The topsheet of Roe comprises at least one treated hydrophilic zone – upper surface and at least one non-treated hydrophobic zone – lower surface (col. 6, lines 1-14). Given the broadest reasonable interpretation, any part of the hydrophilic treated topsheet can constitute a portion of the surface of the topsheet, and can be construed as a hydrophilic zone. Furthermore, because the claim states “at least one treated

hydrophilic zone", this allows for various portions of the topsheet to be construed as hydrophilic zones.

The treated hydrophilic zone of Roe comprises a surfactant (col. 6, lines 1-14) and a skin-wellness substance (col. 6, lines 32-53).

Roe discloses the treated hydrophilic zone is defined by an area that corresponds to a predetermined insult point that includes the central region and a male and female insult point in that the entire upper surface of the topsheet comprises the predetermined insult point.

As to claims 4 and 36, the skin-wellness substance is a substance effective or perceived as being effective in providing skin protection, skin care, skin improvement, or any combination thereof (col. 6, lines 32-53).

As to claims 5, 8, 20, 37, 40, and 51 Roe discloses the skin-wellness substance is selected from the claimed group of materials (col. 14, lines 15-47).

As to claims 6, 7, 38, and 39, Roe incorporates by reference suitable skin-wellness substances include Aloe and Vitamin E (col. 14, lines 43-47 refers to Roe USPN 5609587, which lists Aloe and Vitamin E as components of a skin-wellness substance col. 23, lines 28-44).

As to claim 30, the garment of Roe further comprises first and second leg gathers Figure 2.

Claim Rejections - 35 USC § 103

7. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

8. Claims 13, 18, 23, 28, 45, and 50 are rejected under 35 U.S.C. 103(a) as being unpatentable over Roe in view of Guidotti et al. USPN 5741241.

Claims 13, 18, 23, 28, 45, and 50 recite length and width dimensions for the treated hydrophilic zone. It is obvious Roe has transverse and longitudinal dimensions of the topsheet (Figure 2) however Roe does not specifically disclose the dimensions. Although it is old and well known in the art to provide an insult area of a topsheet with an oval configuration, the examiner is relying on Guidotti to show a portion of an absorbent article being designated as a wetting area (Guidotti Figure 1, element 16 and col. 4, lines 16-26). Guidotti further discloses a hydrophilic layer 16 that functions as a receiving area and allows liquid to quickly flow penetrate and covers only the wetting area (col. 4, lines 4-7, and lines 23-31). Based on the teachings of Roe and Guidotti, it would have been within the level of one of ordinary skill in the art to provide a

hydrophilic oval area that corresponds to a wetting region to receive discharged body liquids that first contact the diaper surface for the quick penetration and dispersal of those body liquids.

Regarding the dimensions of the wetting region, it would have been an obvious matter of design choice to provide the topsheet and insult zones of Roe/Guidotti with the claimed dimensions, since such a modification would have involved a mere change in the size of a component. A change in size is generally recognized as being within the level of ordinary skill in the art. *In re Rose*, 105 USPQ 237 (CCPA 1955).

9. Claims 51-53 are rejected under 35 U.S.C. 103(a) as being unpatentable over Paul et al. USPN 6217890 in view of Butterworth et al. USPN 4077410.

As to claims 51 and 52, Paul discloses the present invention substantially as claimed. However, Paul does not disclose the composition is aerosolized. Butterworth discloses an absorbent article using an aerosolized surfactant comprising sulfosuccinate for increasing wettability (col. 5, lines 50-56). It would have been obvious to one having ordinary skill in the art at the time the invention was made to use a surfactant comprising sulfosuccinate for the benefits disclosed in Butterworth.

Paul/Butterworth discloses a composition in an absorbent article for providing leak protection and improved skin wellness comprising (Abstract and col. 10, lines 56-59): an amount of surfactant sufficient for rendering substantially hydrophilic an inherently hydrophobic material comprising nonwoven fibers or films (col. 13, lines 22-54); and a skin wellness substance selected from the claimed materials (col. 13 line 55

Art Unit: 3761

through col. 14, line 20). The composition is aerosolized (Butterworth col. 5, lines 50-56).

As to claim 52, see col. 36, lines 39-48.


As to claim 53, Paul discloses a composition in an absorbent article for providing leak protection and improved skin wellness comprising (Abstract and col. 10, lines 56-59): an amount of surfactant (col. 36, lines 39-48) sufficient for rendering substantially hydrophilic an inherently hydrophobic material comprising nonwoven fibers or films (col. 13, lines 22-54); and a skin wellness substance selected from the claimed materials (col. 13 line 55 through col. 14, line 20). However, Paul does not specifically disclose the surfactant is selected from the group consisting of sulfosuccinate, octylphenol ethoxylate, and combinations thereof. Butterworth discloses an absorbent article using a surfactant comprising sulfosuccinate for increasing wettability (col. 5, lines 50-56). It would have been obvious to one having ordinary skill in the art at the time the invention was made to use a surfactant comprising sulfosuccinate for the benefits disclosed in Butterworth.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Jacqueline F Stephens whose telephone number is (703) 308-8320. The examiner can normally be reached on Monday-Friday 9:00-5:30.

Art Unit: 3761

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Larry Schwartz can be reached on (703) 308-1412. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).


Jacqueline F Stephens
Examiner
Art Unit 3761

September 27, 2004